IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

FRIDAY, THE 27TH JULY 2007 / 5TH SRAVANA 1929

OP.No. 19601 of 1999(S)

RA 289/1998 IN ITA.758/COCH/1992 OF THE INCOME TAX APPELLATE TRIBUNAL, COCHIN BENCH
.....

PETITIONER:

THE COMMISSIONER OF INCOME-TAX,
TRIVANDRUM.-

BY STANDING COUNSEL, GOVT. OF INDIA (TAXES)
SRI.P.K.R.MENON(SR.) & SRI.GEORGE K.GEORGE

RESPONDENT:

SRI.R.BHARATHAN, KOCHAPPALLIL VEEDU,
THEKKEVILA, ERAVIPURAM, KOLLAM.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 27/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L.DATTU, C.J. & K.T.SANKARAN, J.

O.P.No.19601 of 1999-S

Dated, this the 27th day of July, 2007

JUDGMENT

H.L.Dattu, C.J.

The Revenue has filed this petition under Section 256(2) of the Income Tax Act, 1961 ('Act' for short), inter alia, requesting us to direct the Income Tax Appellate Tribunal to state the case and refer the questions of law that would arise in I.T.A.No.758 of 1992 dated 26th August, 1998 for the assessment year 1984-85. The questions of law raised by the Revenue are as under:

> "1. Whether, on the facts and in the circumstances of the case, the Tribunal is right in law and fact in cancelling the levy of penalty u/s 271(1)(c) of the I.T.Act, 1961?
>
> 2. Whether, on the facts and in the circumstances of the case and concealment under the law being in the return filed, the Tribunal is right in law in relying on the decision of M.P.High Court reported in 232 ITR 34?
>
> 3. Whether, on the facts and in the circumstances of the case is production of books of accounts an answer to the concealment in the return?"

(2) The Tribunal has rejected the appeal filed by the Revenue. The Revenue had filed an application under Section 256(1) of the Act requesting the Tribunal to state the case and refer the questions of law that would arise in I.T.A.No.758 of 1992 for the assessment year 1984-85. The Tribunal has rejected the application.

(3) We have carefully perused the order passed by the Tribunal and also the questions of law raised by the Revenue for consideration and decision by this Court. In our opinion, the questions of law raised by the Revenue

require consideration by this Court. Therefore, a direction requires to be issued to the Tribunal to state the case and refer the questions of law that would arise in I.T.A.No.758 of 1992 dated 26.8.1998 for the assessment year 1984-85.

(4) Accordingly, the following:

Order

i) The petition is allowed.

ii) A direction is issued to the Tribunal to state the case and refer the questions of law that would arise in I.T.A.No.758 of 1992 dated 26.8.1998 for the assessment year 1984-85 for consideration and decision by this Court, as expeditiously as possible.

Ordered accordingly.

(**H.L.DATTU)**
CHIEF JUSTICE

(K.T.SANKARAN)
JUDGE

vns